

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LORENA MARIN

Claimant

VS.

NATIONAL BEEF PACKING CO.

Respondent

AND

ZURICH AMERICAN INSURANCE CO.

Insurance Carrier

Docket Nos. **1,038,952 &
1,038,953**

ORDER

Claimant requests review of the January 9, 2009 preliminary hearing Order entered by Administrative Law Judge Pamela J. Fuller.

ISSUES

The Administrative Law Judge (ALJ) denied claimant's preliminary hearing request for a change of the authorized treating physician. Claimant argues the evidence supported her request for a change of treating physician. Respondent argues the Board does not have jurisdiction to review the issue raised by the claimant. In the alternative, it argues the evidence supports the ALJ's determination and should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

The only issue raised before the ALJ was claimant's request to change the authorized treating physician. This is an appeal from the ALJ's denial of claimant's request for a change of treating physician.

This Board Member agrees with the respondent and concludes, at this juncture of the proceeding, the Board does not have jurisdiction to review this preliminary hearing order.

The Board's jurisdiction to review preliminary hearing issues and findings is generally limited to the following:

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide timely notice and timely written claim?
- (4) Is there any defense to the compensability of the claim?¹

Additionally, the Board may review any preliminary hearing order where a judge exceeds his or her jurisdiction.² Jurisdiction is generally defined as authority to make inquiry and decision regarding a particular matter. The jurisdiction and authority of a court to enter upon inquiry and make a decision is not limited to deciding a case rightly but includes the power to decide it wrongly. The test of jurisdiction is not a correct decision but the right to enter upon inquiry and make a decision.³

The Board has on other occasions determined that a request to change the authorized treating physician is about or concerns the furnishing of medical treatment. The preliminary hearing statute found at K.S.A. 44-534a gives the ALJ authority to grant or deny the request for medical compensation pending a full hearing on the claim. Thus, the ALJ did not exceed her jurisdiction and the Board does not have jurisdiction to review the Judge's preliminary Order.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁴ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2008 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.⁵

WHEREFORE, the claimant's appeal is dismissed and Administrative Law Judge Pamela J. Fuller's Order dated January 9, 2009, remains in full force and effect.

¹ K.S.A. 44-534a.

² K.S.A. 44-551.

³ See *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D.* No. 512, 235 Kan. 927, 683, P.2d 902 (1984).

⁴ K.S.A. 44-534a.

⁵ K.S.A. 2008 Supp. 44-555c(k).

IT IS SO ORDERED.

Dated this _____ day of March 2009.

HONORABLE DAVID A. SHUFELT
BOARD MEMBER

c: Thomas R. Fields, Attorney for Claimant
Kerry McQueen, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge